

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Burlington Northern and Santa Fe Railway Company, the County
of Knox, and the State of Illinois, Department of Transportation.

Stipulated Agreement regarding improving public safety at the
crossing of the Company's track with a public highway known as
FAS-399 (CH-26) located near Galesburg, Knox County, Illinois,
designated as crossing DOT 072 650D, milepost 168.03-Q.

T02-0068

ORDER

By the Commission:

On May 31, 2002, June 4, 2002, June 19, 2002, and June 21, 2002, the Staff of the Illinois Commerce Commission, The Burlington Northern and Santa Fe Railway Company, the County of Knox and the Illinois Department of Transportation, respectively, executed the Stipulated Agreement according to the provisions of Section 18c-7401 of the Illinois Commercial Transportation Law. The Stipulated Agreement, which is appended hereto, provides for a safety improvement at the crossing of The Burlington Northern and Santa Fe Railway Company 's track with a public highway known as FAS-399 (CH-26), located near Galesburg, Knox County, Illinois. The Stipulated Agreement contains an estimate of cost to accomplish the improvement and a division of cost among the parties.

The Commission, having given due consideration to the Stipulated Agreement, finds that:

- (1) the Commission has jurisdiction over the parties and the subject matter of this proceeding;
- (2) the physical characteristics of the subject highway - railroad grade crossing, rail and highway volumes and speeds are indicated on Exhibit A, of the Stipulated Agreement, appended hereto;
- (3) the Parties agree that in the interest of public safety the improvement as set forth in Section 2 of the Stipulated Agreement, appended hereto, should be performed;
- (4) the cost for the proposed improvement should be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, in accordance with the Law;
- (5) it is fair and reasonable that the Secretary of the Illinois Department of

Transportation through the Grade Crossing Protection Fund of the Motor Fuel Tax Law, and The Burlington Northern and Santa Fe Railway Company be directed to bear their respective portions of the actual cost of the proposed improvement as set forth in Section 5 of the Stipulated Agreement, appended hereto.

- (6) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED that the terms of the Stipulated Agreement executed by the Staff of the Illinois Commerce Commission, The Burlington Northern and Santa Fe Railway Company, the County of Knox and the Illinois Department of Transportation, on May 31, 2002, June 4, 2002, June 19, 2002, and June 21, 2002, respectively, be, and they are hereby accepted and required to be met by the aforesaid parties.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company be, and it is hereby, required and directed to proceed immediately in performing its work as set forth in Section 2 of the Stipulated Agreement, appended hereto, and shall complete its work within one (1) year from the date of this Order.

IT IS FURTHER ORDERED that the cost of making the improvement herein required shall be divided among the parties and the Grade Crossing Protection Fund of the Motor Fuel Tax Law, as set forth in Section 5 of the Stipulated Agreement, appended hereto.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, within thirty (30) days of its receipt of a detailed cost estimate and general layout plan, furnish to the Commission a statement of its approval or disapproval thereof, this for the information of the Commission when considering the application herein required to be filed in accordance with Form 3 of 92 Ill. Adm. Code 1535.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall file Form 3 of 92 Ill. Adm. Code 1535 of this Commission, showing details of the automatic warning devices herein required and shall receive approval thereof by

X-Resolution before commencing the work of installation.

IT IS FURTHER ORDERED that all bills for expenditures authorized to be reimbursed from the Grade Crossing Protection Fund shall be submitted to Mr. Henry Cronister, Bureau of Local Roads and Streets, Main Office, Illinois Department of Transportation at 2300 South Dirksen Parkway, Springfield, Illinois, 62764. The Illinois Department of Transportation shall submit a copy of each bill to the Director of Processing and Information, Transportation Division of the Commission. The final bill for expenditures shall be clearly marked "Final Bill". All bills shall be submitted to the Department no later than twenty-four (24) months from the date of this Order. Authorization for reimbursement from the Grade Crossing Protection Fund shall expire twelve (12) months after the completion date specified in this Order. The Department shall, at the end of the 24th month from this Order date, de-obligate all residual funds accountable for installation costs for this project.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the progress [it] has made toward completion of the work herein required. Each progress report shall include the Commission Order Number, the Order Date, the project completion date as noted in this Order, crossing information (Inventory Number and Railroad Milepost), type of improvement, and project manager information (the name, title, mailing address, phone number and facsimile of the [Railroad] employee responsible for management of the project.)

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall submit to the Director of Processing, Transportation Division of the Commission within five (5) days of the completion of the work herein required, a National Inventory Update Report Form as a notice of said completion.

IT IS FURTHER ORDERED that The Burlington Northern and Santa Fe Railway Company shall at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Division of the Commission stating the status of expenditures of the total project and percentage of completion of the project. If the project is behind schedule the report(s) must also include a brief explanation of the reason(s) for the delay.

IT IS FURTHER ORDERED that, any person making a Request For Extension Of Time up to 30 days to complete a project ordered by the Commission must file a request with the Director of Processing no later than 14 days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.

IT IS FURTHER ORDERED that, any person requesting a extension of time that exceeds 30 days must file a Petition For Supplemental Order with the Director of Processing no later than 21 days in advance of the scheduled deadline. The Commission will decide Petitions For Supplemental Orders.

IT IS FURTHER ORDERED that, requests For Extension Of Time and Petitions For Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request For Extension Of Time or a Petition For Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that, the Commission or its Administrative Law Judge reserves the right to deny Petitions For Supplemental Orders and Requests For Extension Of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that, subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision subject to the Administrative Review Law.

By Order of the Commission this 24th day of July, 2002.

*Richard P. Mathias*³

Chairman

JUDGE
SECTION CHIEF <i>MES</i>
ORDERS SUPERVISOR <i>[Signature]</i>